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Attorneys for Defendants
FUNZIO, INC. and
FUNZIO USA, INC.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

GAMETEK LLC

Plaintiff,

v.

FACEBOOK, INC.; FACEBOOK
OPERATIONS, LLC; FACEBOOK
PAYMENTS, INC.; FACEBOOK SERVICES,
INC.; 6WAVES LLC f/k/a LOLAPPS INC. d/b/a
6WAVES LOLAPPS d/b/a SIX WAVES;
6WAVES TECHNOLOGIES, LLC f/k/a
LOLAPPS INC. d/b/a 6WAVES LOLAPPS d/b/a
SIX WAVES; 6WAVES US, INC. f/k/a
LOLAPPS INC. d/b/a 6WAVES LOLAPPS d/b/a
SIX WAVES; BIG VIKING GAMES INC. f/k/a
TALLTREE GAMES; BUFFALO STUDIOS
LLC; CIE GAMES, INC.; CROWDSTAR
INTERNATIONAL LIMITED; CROWDSTAR
INC.; CROWDSTAR NETWORK, LLC;
ELECTRONIC ARTS INC. d/b/a EA
INTERACTIVE d/b/a PLAYFISH d/b/a POGO
GAMES; FUNZIO, INC.; FUNZIO USA, INC.;
ROCKYOU, INC.; SIX WAVES INC. f/k/a
LOLAPPS INC. d/b/a 6WAVES LOLAPPS d/b/a
SIX WAVES; THEBROTH INC.; WOOGA
GMBH; and ZYNGA INC.

Defendants.

Case No. 3:12-cv-00501 BEN (RBB)

**FUNZIO, INC.'S AND FUNZIO USA,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT FOR INFRINGEMENT
OF U.S. PATENT NO. 7,076,445; AND
ASSERTION OF COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Judge: Honorable Judge Roger T. Benitez
Crtrm: 3

1 Defendants Funzio, Inc. and Funzio USA, Inc. (collectively “Funzio”), by and through
2 their attorneys, answer Plaintiff Gametek LLC’s (“Gametek’s”) Complaint for Infringement of
3 U.S. Patent No. 7,076,045. Funzio denies each and all allegations in the Complaint that it does
4 not expressly admit.

5 **THE PARTIES**

6 1. Funzio is without knowledge or information sufficient to form a belief as to
7 the truth of allegations set forth in paragraph 1 the Complaint; and at least on this basis Funzio
8 denies each and all allegations set forth therein.

9 2. The allegations set forth in paragraph 2 of the Complaint are not directed to
10 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
11 is without knowledge or information sufficient to form a belief as to the truth of allegations set
12 forth in paragraph 2 the Complaint; and at least on this basis Funzio denies each and all
13 allegations set forth therein.

14 3. The allegations set forth in paragraph 3 of the Complaint are not directed to
15 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
16 is without knowledge or information sufficient to form a belief as to the truth of allegations set
17 forth in paragraph 3 the Complaint; and at least on this basis Funzio denies each and all
18 allegations set forth therein.

19 4. The allegations set forth in paragraph 4 of the Complaint are not directed to
20 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
21 is without knowledge or information sufficient to form a belief as to the truth of allegations set
22 forth in paragraph 4 the Complaint; and at least on this basis Funzio denies each and all
23 allegations set forth therein.

24 5. The allegations set forth in paragraph 5 of the Complaint are not directed to
25 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
26 is without knowledge or information sufficient to form a belief as to the truth of allegations set
27

1 forth in paragraph 5 the Complaint; and at least on this basis Funzio denies each and all
2 allegations set forth therein.

3 6. The allegations set forth in paragraph 6 of the Complaint are not directed to
4 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
5 is without knowledge or information sufficient to form a belief as to the truth of allegations set
6 forth in paragraph 6 the Complaint; and at least on this basis Funzio denies each and all
7 allegations set forth therein.

8 7. The allegations set forth in paragraph 7 of the Complaint are not directed to
9 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
10 is without knowledge or information sufficient to form a belief as to the truth of allegations set
11 forth in paragraph 7 the Complaint; and at least on this basis Funzio denies each and all
12 allegations set forth therein.

13 8. The allegations set forth in paragraph 8 of the Complaint are not directed to
14 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
15 is without knowledge or information sufficient to form a belief as to the truth of allegations set
16 forth in paragraph 8 the Complaint; and at least on this basis Funzio denies each and all
17 allegations set forth therein.

18 9. The allegations set forth in paragraph 9 of the Complaint are not directed to
19 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
20 is without knowledge or information sufficient to form a belief as to the truth of allegations set
21 forth in paragraph 9 the Complaint; and at least on this basis Funzio denies each and all
22 allegations set forth therein.

23 10. The allegations set forth in paragraph 10 of the Complaint are not directed to
24 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
25 is without knowledge or information sufficient to form a belief as to the truth of allegations set
26 forth in paragraph 10 the Complaint; and at least on this basis Funzio denies each and all
27 allegations set forth therein.

1 11. The allegations set forth in paragraph 11 of the Complaint are not directed to
2 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
3 is without knowledge or information sufficient to form a belief as to the truth of allegations set
4 forth in paragraph 11 the Complaint; and at least on this basis Funzio denies each and all
5 allegations set forth therein.

6 12. The allegations set forth in paragraph 12 of the Complaint are not directed to
7 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
8 is without knowledge or information sufficient to form a belief as to the truth of allegations set
9 forth in paragraph 12 the Complaint; and at least on this basis Funzio denies each and all
10 allegations set forth therein.

11 13. The allegations set forth in paragraph 13 of the Complaint are not directed to
12 Funzio and thus require no answer from Funzio. To the extent that an answer is required, Funzio
13 is without knowledge or information sufficient to form a belief as to the truth of allegations set
14 forth in paragraph 13 the Complaint; and at least on this basis Funzio denies each and all
15 allegations set forth therein.

16 14. Funzio admits that Funzio, Inc. is a Delaware corporation. Funzio denies the
17 remainder of the allegations.

18 15. Funzio admits that Funzio USA, Inc. is a Delaware corporation. Funzio denies
19 the remainder of the allegations.

20 16. The allegations set forth in paragraph 16 (erroneously denoted "10") of the
21 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
22 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
23 to the truth of allegations set forth in paragraph 16 the Complaint; and at least on this basis
24 Funzio denies each and all allegations set forth therein.

25 17. The allegations set forth in paragraph 17 (erroneously denoted "11") of the
26 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
27 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
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1 to the truth of allegations set forth in paragraph 17 the Complaint; and at least on this basis
2 Funzio denies each and all allegations set forth therein.

3 18. The allegations set forth in paragraph 18 (erroneously denoted "12") of the
4 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
5 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
6 to the truth of allegations set forth in paragraph 18 the Complaint; and at least on this basis
7 Funzio denies each and all allegations set forth therein.

8 19. The allegations set forth in paragraph 19 (erroneously denoted "13") of the
9 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
10 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
11 to the truth of allegations set forth in paragraph 19 the Complaint; and at least on this basis
12 Funzio denies each and all allegations set forth therein.

13 **JURISDICTION AND VENUE**

14 20. Funzio admits that this action invokes patent laws of the United States, and
15 that this Court has subject matter jurisdiction over patent law claims.

16 21. Funzio admits that this Court has personal jurisdiction over Funzio. Funzio is
17 without knowledge or information sufficient to form a belief as to the truth of remainder of
18 allegations set forth in paragraph 21 (erroneously denoted "15") of the Complaint; and at least on
19 this basis Funzio denies them.

20 22. Funzio admits that the Southern District of California is a proper venue as to
21 Funzio. Funzio is without knowledge or information sufficient to form a belief as to the truth of
22 remainder of allegations set forth in paragraph 22 (erroneously denoted "16") of the Complaint;
23 and at least on this basis Funzio denies them.

24 **JOINDER**

25 23. Funzio denies that joinder is proper. Funzio is without knowledge or
26 information sufficient to form a belief as to the truth of remainder of allegations set forth in
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1 paragraph 23 (erroneously denoted “17”) of the Complaint; and at least on this basis Funzio
2 denies them.

3 **COUNT I**

4 **INFRINGEMENT OF U.S. PATENT NO. 7,076,445**

5 24. Funzio admits that U.S. Patent No. 7,076,445 (“the ‘445 patent”) is entitled
6 “SYSTEM AND METHODS FOR OBTAINING ADVANTAGES AND TRANSACTING THE
7 SAME IN A COMPUTER GAMING ENVIRONMENT.” Funzio admits that the ‘445 patent
8 states on its face that it issued on July 11, 2006.

9 25. Funzio is without knowledge or information sufficient to form a belief as to
10 the truth of allegations set forth in paragraph 25 (erroneously denoted “19”) the Complaint; and
11 at least on this basis Funzio denies each and all allegations set forth therein.

12 26. Denied.

13 27. Funzio denies the allegations set forth in paragraph 27 (erroneously denoted
14 “21”) of the Complaint as to Crime City. The remaining allegations of paragraph 27 are not
15 directed to Funzio and thus require no answer from Funzio. To the extent that an answer is
16 required, Funzio is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations, and at least on this basis Funzio denies the remaining allegations.

18 28. The allegations set forth in paragraph 28 (erroneously denoted “22”) of the
19 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
20 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
21 to the truth of allegations set forth in paragraph 28 the Complaint; and at least on this basis
22 Funzio denies each and all allegations set forth therein.

23 29. The allegations set forth in paragraph 29 (erroneously denoted “23”) of the
24 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
25 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
26 to the truth of allegations set forth in paragraph 29 the Complaint; and at least on this basis
27 Funzio denies each and all allegations set forth therein.

1 30. The allegations set forth in paragraph 30 (erroneously denoted “24”) of the
2 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
3 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
4 to the truth of allegations set forth in paragraph 30 the Complaint; and at least on this basis
5 Funzio denies each and all allegations set forth therein.

6 31. The allegations set forth in paragraph 31 (erroneously denoted “25”) of the
7 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
8 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
9 to the truth of allegations set forth in paragraph 31 the Complaint; and at least on this basis
10 Funzio denies each and all allegations set forth therein.

11 32. The allegations set forth in paragraph 32 (erroneously denoted “26”) of the
12 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
13 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
14 to the truth of allegations set forth in paragraph 32 the Complaint; and at least on this basis
15 Funzio denies each and all allegations set forth therein.

16 33. The allegations set forth in paragraph 33 (erroneously denoted “27”) of the
17 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
18 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
19 to the truth of allegations set forth in paragraph 33 the Complaint; and at least on this basis
20 Funzio denies each and all allegations set forth therein.

21 34. The allegations set forth in paragraph 34 (erroneously denoted “28”) of the
22 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
23 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
24 to the truth of allegations set forth in paragraph 34 the Complaint; and at least on this basis
25 Funzio denies each and all allegations set forth therein.

26 35. The allegations set forth in paragraph 35 (erroneously denoted “29”) of the
27 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
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1 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
2 to the truth of allegations set forth in paragraph 35 the Complaint; and at least on this basis
3 Funzio denies each and all allegations set forth therein.

4 36. The allegations set forth in paragraph 36 (erroneously denoted "30") of the
5 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
6 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
7 to the truth of allegations set forth in paragraph 36 the Complaint; and at least on this basis
8 Funzio denies each and all allegations set forth therein.

9 37. The allegations set forth in paragraph 37 (erroneously denoted "31") of the
10 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
11 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
12 to the truth of allegations set forth in paragraph 37 the Complaint; and at least on this basis
13 Funzio denies each and all allegations set forth therein.

14 38. The allegations set forth in paragraph 38 (erroneously denoted "32") of the
15 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
16 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
17 to the truth of allegations set forth in paragraph 38 the Complaint; and at least on this basis
18 Funzio denies each and all allegations set forth therein.

19 39. The allegations set forth in paragraph 39 (erroneously denoted "33") of the
20 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
21 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
22 to the truth of allegations set forth in paragraph 39 the Complaint; and at least on this basis
23 Funzio denies each and all allegations set forth therein.

24 40. The allegations set forth in paragraph 40 (erroneously denoted "34") of the
25 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
26 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
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1 to the truth of allegations set forth in paragraph 40 the Complaint; and at least on this basis
2 Funzio denies each and all allegations set forth therein.

3 41. The allegations set forth in paragraph 41 (erroneously denoted “35”) of the
4 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
5 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
6 to the truth of allegations set forth in paragraph 41 the Complaint; and at least on this basis
7 Funzio denies each and all allegations set forth therein.

8 42. The allegations set forth in paragraph 42 (erroneously denoted “36”) of the
9 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
10 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
11 to the truth of allegations set forth in paragraph 42 the Complaint; and at least on this basis
12 Funzio denies each and all allegations set forth therein.

13 43. The allegations set forth in paragraph 43 (erroneously denoted “37”) of the
14 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
15 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
16 to the truth of allegations set forth in paragraph 43 the Complaint; and at least on this basis
17 Funzio denies each and all allegations set forth therein.

18 44. The allegations set forth in paragraph 44 (erroneously denoted “38”) of the
19 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
20 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
21 to the truth of allegations set forth in paragraph 44 the Complaint; and at least on this basis
22 Funzio denies each and all allegations set forth therein.

23 45. The allegations set forth in paragraph 45 (erroneously denoted “39”) of the
24 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
25 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
26 to the truth of allegations set forth in paragraph 45 the Complaint; and at least on this basis
27 Funzio denies each and all allegations set forth therein.

1 46. The allegations set forth in paragraph 46 (erroneously denoted “40”) of the
2 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
3 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
4 to the truth of allegations set forth in paragraph 46 the Complaint; and at least on this basis
5 Funzio denies each and all allegations set forth therein.

6 47. The allegations set forth in paragraph 47 (erroneously denoted “41”) of the
7 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
8 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
9 to the truth of allegations set forth in paragraph 47 the Complaint; and at least on this basis
10 Funzio denies each and all allegations set forth therein.

11 48. The allegations set forth in paragraph 48 (erroneously denoted “42”) of the
12 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
13 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
14 to the truth of allegations set forth in paragraph 48 the Complaint; and at least on this basis
15 Funzio denies each and all allegations set forth therein.

16 49. The allegations set forth in paragraph 49 (erroneously denoted “43”) of the
17 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
18 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
19 to the truth of allegations set forth in paragraph 49 the Complaint; and at least on this basis
20 Funzio denies each and all allegations set forth therein.

21 50. The allegations set forth in paragraph 50 (erroneously denoted “44”) of the
22 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
23 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
24 to the truth of allegations set forth in paragraph 50 the Complaint; and at least on this basis
25 Funzio denies each and all allegations set forth therein.

26 51. The allegations set forth in paragraph 51 (erroneously denoted “45”) of the
27 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
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1 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
2 to the truth of allegations set forth in paragraph 51 the Complaint; and at least on this basis
3 Funzio denies each and all allegations set forth therein.

4 52. The allegations set forth in paragraph 52 (erroneously denoted “46”) of the
5 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
6 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
7 to the truth of allegations set forth in paragraph 52 the Complaint; and at least on this basis
8 Funzio denies each and all allegations set forth therein.

9 53. The allegations set forth in paragraph 53 (erroneously denoted “47”) of the
10 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
11 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
12 to the truth of allegations set forth in paragraph 53 the Complaint; and at least on this basis
13 Funzio denies each and all allegations set forth therein.

14 54. Denied.

15 55. Denied.

16 56. The allegations set forth in paragraph 56 (erroneously denoted “50”) of the
17 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
18 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
19 to the truth of allegations set forth in paragraph 56 the Complaint; and at least on this basis
20 Funzio denies each and all allegations set forth therein.

21 57. The allegations set forth in paragraph 57 (erroneously denoted “51”) of the
22 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
23 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
24 to the truth of allegations set forth in paragraph 57 the Complaint; and at least on this basis
25 Funzio denies each and all allegations set forth therein.

26 58. The allegations set forth in paragraph 58 (erroneously denoted “52”) of the
27 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
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1 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
2 to the truth of allegations set forth in paragraph 58 the Complaint; and at least on this basis
3 Funzio denies each and all allegations set forth therein.

4 59. The allegations set forth in paragraph 59 (erroneously denoted "53") of the
5 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
6 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
7 to the truth of allegations set forth in paragraph 59 the Complaint; and at least on this basis
8 Funzio denies each and all allegations set forth therein.

9 60. The allegations set forth in paragraph 60 (erroneously denoted "54") of the
10 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
11 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
12 to the truth of allegations set forth in paragraph 60 the Complaint; and at least on this basis
13 Funzio denies each and all allegations set forth therein.

14 61. The allegations set forth in paragraph 61 (erroneously denoted "55") of the
15 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
16 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
17 to the truth of allegations set forth in paragraph 61 the Complaint; and at least on this basis
18 Funzio denies each and all allegations set forth therein.

19 62. The allegations set forth in paragraph 62 (erroneously denoted "56") of the
20 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
21 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
22 to the truth of allegations set forth in paragraph 62 the Complaint; and at least on this basis
23 Funzio denies each and all allegations set forth therein.

24 63. The allegations set forth in paragraph 63 (erroneously denoted "57") of the
25 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
26 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
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1 to the truth of allegations set forth in paragraph 63 the Complaint; and at least on this basis
2 Funzio denies each and all allegations set forth therein.

3 64. The allegations set forth in paragraph 64 (erroneously denoted "58") of the
4 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
5 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
6 to the truth of allegations set forth in paragraph 64 the Complaint; and at least on this basis
7 Funzio denies each and all allegations set forth therein.

8 65. The allegations set forth in paragraph 65 (erroneously denoted "59") of the
9 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
10 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
11 to the truth of allegations set forth in paragraph 65 the Complaint; and at least on this basis
12 Funzio denies each and all allegations set forth therein.

13 66. The allegations set forth in paragraph 66 (erroneously denoted "60") of the
14 Complaint are not directed to Funzio and thus require no answer from Funzio. To the extent that
15 an answer is required, Funzio is without knowledge or information sufficient to form a belief as
16 to the truth of allegations set forth in paragraph 66 the Complaint; and at least on this basis
17 Funzio denies each and all allegations set forth therein.

18 **PRAYER FOR RELIEF**

19 Funzio denies that Gametek is entitled to the relief it requests in the Complaint, or to any
20 other relief.

21 **DEMAND FOR JURY TRIAL**

22 Gametek's demand for trial by jury of any issues so triable by right does not state any
23 allegation. To the extent that any allegation is included in the demand, Funzio denies each and
24 all allegations therein.

25 **AFFIRMATIVE DEFENSES**

26 **FIRST DEFENSE**

27 **(Lack of standing)**

1 7. This case is exceptional against Gametek under 35 U.S.C. § 285.

2
3 **COUNTERCLAIMS**

4 **THE PARTIES**

5 1. Funzio, Inc. is a corporation organized and existing under the laws of the State of
6 Delaware, with a principal place of business located at 55 Second Street, 4th Floor, San
7 Francisco, California 94105.

8 2. Funzio USA, Inc. is a corporation organized and existing under the laws of the
9 State of Delaware, with a principal place of business located at 55 Second Street, 4th Floor, San
10 Francisco, California 94105.

11 3. On information and belief, Gametek LLC is a corporation organized and existing
12 under the laws of the State of California, with a principal place of business located at 500
13 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

14 **JURISDICTION AND VENUE**

15 4. Subject to Funzio's affirmative defenses and denials, Funzio alleges that this
16 Court has jurisdiction over the subject matter of these Counterclaims under Title 28 of United
17 States Code, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202.

18 5. This Court has personal jurisdiction over plaintiff at least because Gametek filed
19 its Complaint with the Court.

20 6. The Southern District of California is a proper venue for these Counterclaims at
21 least to the extent that this Court is a proper venue for Gametek's claims.

22 **FACTUAL BACKGROUND**

23 7. In its Complaint, Gametek asserts that Funzio has been and now is infringing U.S.
24 Patent 7,076,445 ("the '445 patent").

25 **COUNT ONE**

26 **DECLARATORY JUDGEMENT OF NON-INFRINGEMENT OF U.S. PATENT NO.**

27 **7,076,445**

- b. A judgment in favor of Funzio on each and all of its Affirmative Defenses;
- c. A declaration that Funzio has not and does not infringe any valid and enforceable claim of the '445 patent under any theory of patent infringement;
- d. A declaration that each and all of the claims of the '445 patent are invalid;
- e. A declaration that this case is exceptional, and an award to Funzio of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees; and
- f. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Funzio demands trial by jury of any and all issues in this action so triable by right under Rule 38 of the Federal Rules of Civil Procedure.

DATED: May 3, 2012

KING & SPALDING LLP

By: /s/ John O. Gilmore
JOHN O. GILMORE

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FUNZIO, INC. and FUNZIO USA, INC.

CERTIFICATE OF SERVICE

Service to parties who are registered users of the CM/ECF system is through the CM/ECF system. Service to parties who are not registered users of the CM/ECF system is through United States Postal Service, or a third-party commercial carrier.

I certify that, on May 3, 2012, I electronically filed the foregoing **FUNZIO, INC.'S AND FUNZIO USA, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NO. 7,076,445; AND ASSERTION OF COUNTERCLAIMS** with the Clerk of the United States District Court for the Southern District of California through the CM/ECF system.

I further certify that, on May 3, 2012, I deposited the foregoing **FUNZIO, INC.'S AND FUNZIO USA, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NO. 7,076,445; AND ASSERTION OF COUNTERCLAIMS** with the United States Postal Service for First-Class, postage prepaid, delivery to:

Big Viking Games, Inc.
124 Chantry Place #205
London, Ontario N6G5A5 Canada
Wooga GMBH
Saarbrücker Straße 38
10405 Berlin, Germany

Rockyou, Inc.
425 Broadway Street
Redwood City, CA 94063

/s/ Diana Sciamanna

Diana Sciamanna